

Steven Charles MATHEWS
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Filed: April 1, 2004
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at this time, without prejudice or disclaimer to filing one or more applications directed to the remaining claims.

Applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. § 121, restriction may be required if two or more independent and distinct inventions are claimed in one application. Under M.P.E.P. § 803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination can be made without serious burden.

The inventions of Groups I-III are not distinct. Under M.P.E.P. § 802.01, "distinct" means that the one or more inventions are not connected in at least one of design, operation or effect and are patentable over each other. The inventions of Groups I-III are connected in operation and effect. Group I claims 1-7 are directed to a device for monitoring a length of time a person has been immobile. Group II claims 8-13 are directed to a method for monitoring a length of time a person has been immobile using the device of Group I. Group III claims 14-18 are directed to a computer storage medium, including computer executable code for monitoring a length of time that a person has been immobile, using the device and method of Groups I & II. Applicant therefore maintains that the inventions of Groups I-III are not distinct and restriction is not proper.

Furthermore, under M.P.E.P. § 803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction is not required.

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Applicant respectfully submits that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Groups I-III would not require a serious burden once the prior art relevant to Group II has been identified.

Therefore, there would be no serious burden on the Examiner to examine Groups I-III together in the subject application. Hence, the Examiner must examine these Groups on the merits.

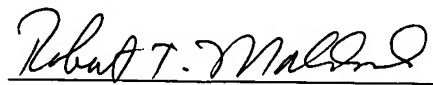
In view of the foregoing, Applicant maintains that restriction is not proper under 35 U.S.C. § 121 and respectfully requests that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee is deemed necessary in connection with the filling of this communication. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

An early and favorable examination of this application is earnestly solicited.

Respectfully submitted,


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